

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1121 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VINOD @ VINUBHAI MAGANBHAI CHRISTIAN

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR SP DAVE, LD. APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/04/98

ORAL JUDGEMENT

1. This appeal is directed against the conviction and sentence dated 22/10/1997 rendered by the Ld. Special Judge, City of Ahmedabad (Court No. 11) in Special Case No. 6 of 1994.

2. The appellant herein, referred to as 'the accused' in this judgment, was convicted of the offences punishable u/Ss. 7 and 13 (1)(d) (I) (II) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and was sentenced to undergo rigorous imprisonment (RI) for a period of six months and to pay fine of Rs.500/in default to undergo RI for one month for the offence

punishable u/S. 7 of the PC Act and to undergo RI for one year and to pay fine of Rs.500/- in default to undergo RI for one month for the offence punishable u/S. 13(1)(d) (I) & (II) of the PC Act.

3. The facts of the prosecution case might be gathered from the impugned judgment : The accused was serving as a Junior Clerk with the Ahmedabad Municipal Corporation at the relevant point of time. He was working as such with Sub Zonal Office of the Corporation located at Naroda area. At the relevant point of time the accused was handling the work of tax department. He came in contact with the complainant Rajaldas (Raghavdas) Ghanshyamdas Riswani. The complainant was having his shop in the said area. It was in respect of this shop that there was house assessment by the Corporation to the extent of Rs.2160/- per year. The complainant challenged the said assessment in an appeal before the Ahmedabad Small Causes Court. That appeal was partly allowed and the assessment was reduced to Rs.480/- per year for the aforesaid shop. The judgment of the Ahmedabad Small Causes Court was accepted and necessary changes were required to be effected in the concerned book/register where the final assessment was to be mentioned. It has been alleged that pursuant to the judgment of the Ahmedabad Small Causes Court necessary changes were to be made and that work was within the control of the present accused. It is further alleged that the accused demanded the sum of Rs.300/- by way of illegal gratification for making necessary changes in the aforesaid register. It is the case of the complainant that prior to the incident the accused had visited his shop and demanded the amount while administering a threat that if he would not satisfy his demand, he would have to meet with serious consequences and the judgment given by the Court in his favour would not be given any effect. Thereafter somewhere in the month of June, as per the talk and demand made by the accused the complainant had been to the office of A.C.B. lodging his complaint, with the result a trap was arranged. On that occasion since the accused had not demanded any amount and since no amount was offered by the complainant or accepted by the accused that trap failed. It is the prosecution case that once again the necessary changes were not made by the accused in the register maintained by the Corporation as aforesaid. Consequently on 16/6/1993 the complainant approached the A.C.B. Office and lodged his complaint resulting in arrangement of a trap. At the time of such second trap the accused was found in his office at the relevant point of time and he demanded the amount of Rs.300/- which was offered by the complainant and duly

accepted by the accused. It has been alleged that after accepting the amount of Rs.300/- the accused had placed the cover containing the amount of Rs.300/- below the telephone instrument kept in the next room. This amount was recovered accordingly at the time of the raid. A panchnama was prepared in respect of the said trap and after due investigation and after obtaining necessary sanction as required u/S. 19(1)(c) of the PC Act, the accused was charge-sheeted. The defence of the accused was that of total denial.

4. The Ld. Special Judge after hearing the submissions made on behalf of both the sides rendered judgment and order of conviction and sentence as aforesaid. That is how the accused has been before this Court.

5. The prosecution examined 4 witnesses before the Ld. Special Judge. They have been the Panch witness Lawrence Hiralal Christian P.W. 1 exh.7, Kantilal Chhanabhai Parmar Panch witness (Panch witness no.2) exh. 10, Raghavdas Keshavdas Rizwani, the complainant, P.W. 3 exh. 11 and Kirankumar Manubhai Rathod, the Investigating Officer, P.W. 4 exh. 13.

6. The complaint has been placed on record at exh. 12 and the Panchnama has been placed on record at exh. 8.

7. It has been submitted on behalf of the appellant-accused that the prosecution has failed to establish beyond reasonable doubt the prosecution story both with regard to demand and acceptance of illegal gratification in the sum of Rs.300/- by the accused. It has been submitted that even the very basis for making demand of illegal gratification has not been proved by the prosecution. It has been submitted that the Ld. Special Judge has erred in not properly weighing the documentary evidence in the form of entries in the register though placed on record at exh. 15. Even the circumstances with regard to wrapping of the piece of paper for covering 3 muddamal notes of Rs.100/- each stained with anthracene powder have escaped appropriate consideration at the hands of the Ld. Special Judge. The circumstances with regard to failure of the previous trap against the accused at the instance of the very complainant have not been properly weighed. Even the complainant's evidence is very shaky and is devoid of required corroboration from the panch witness, who accompanied him and who has been declared as hostile before the Ld. Special Judge.

8. In reply, the Ld. A.P.P. for the State has read the impugned judgment before this Court and submitted that the complainant had not received necessary communication giving effect to the judgment of the Ahmedabad Small Causes Court reducing the annual assessment of his shop for the purpose of levying tax and, therefore, he was truly aggrieved of the accused not attending to the work on account of extraneous consideration as aforesaid. He also tried to support the judgment from the stand point of recovery of the muddamal notes wrapped in a cover from below the telephone instrument in the room next to the room wherein the cover was accepted by the accused.

9. In order to appreciate the submissions made on behalf of both the sides it would be appropriate to deal with what in fact has been done at the office level in so far as the annual assessment of the complainant's shop is concerned. It is not in dispute that the investigating agency had attached the relevant documents in the form of copies of the relevant entries in the register maintained by the Ahmedabad Municipal Corporation. In fact the same were placed on the record of the said case at exh. 15. It is different matter that the Ld. Special Judge has chosen not to discuss this piece of evidence. The entries in the register indicate that there was a Municipal Valuation Appeal No. 3244 of 1988 in which the assessment was reduced from Rs.2160/- to Rs.480/- for the years 1986-87 to 1991-92. There appears to be working of the tax in the sum of Rs.5415-30 ps. on the basis of the original assessment. Then there is an endorsement with regard to the recovery of Rs.1600/- against a receipt bearing No. 484/2 on 15/4/1993. Then there is an endorsement to the effect that true copy of the demand register of 1992-93 has been received. Another part of exh. 15 is regarding refund form of the Tax Department of Ahmedabad Municipal Corporation. The name of the ward is written to be Naroda-C and the date is 23/11/1992. In column no. 1 serial no.1 is written. In column nos. 2, 3 and 4 regarding tenement the particulars with regard to complainant's shop are entered. In column no. 5 regarding the gross assessment which was made, is stated to be Rs.2160/-. In column no. 6 regarding fresh assessment fixed, Rs.480/- are written. In the next para. particulars with regard to valuation appeal are entered. Rest of the printed paras. are blank. On the reverse side of this form there is an entry with regard to refund and the important endorsement is with regard to the dates of making the entries for the purpose of refund. Such dates appear at the bottom of the form which is duly filled in. The first date is 14/12/1992

below the signature of Clerk. Then there are signatures of Inspector and District Superintendent in respect of whose signatures dates do not appear. Then there is a signature of the accountant, below which there is date 2/2/93. Then there is signature of Deputy Assessor and Collector below which there is date of 2/2/93. Then there is a stamp bearing endorsement dated 6/2/93 initialled on 7/3/93. This document, therefore, clearly indicates that necessary effect of the judgment rendered by the Ahmedabad Small Causes Court was given latest by 2/2/1993 and the same would indicate the execution thereof on or around 7/3/1993. This would disclose a circumstance that not only the effect of the judgment of the Ahmedabad Small Causes Court must have been given, but the concerned party, namely the complainant must have been informed about such an effect having been given on or around 7/3/1993. On going through the whole of the evidence which has been placed on the record before the Id. Special Judge, these circumstances flowing from exh. 15 appear not to have been explained. In my opinion, this will have a smashing effect on the prosecution evidence which has been placed on record.

10. It can, therefore, be seen that the very basis of the prosecution story is left in doubt. Bearing this in mind the evidence which has been placed on record would need careful scrutiny.

11. The complainant who has been examined as P.W. 3 at exh. 11 has deposed to the facts with regard to the assessment of his shop for the purpose of municipal tax. He has stated that he had undertaken follow up work for seeing that necessary entries were made for giving effect to the judgment of the Ahmedabad Small Causes Court in the year 1993. At that time Zonal office of the Ahmedabad Municipal Corporation was in Naroda. He has not deposed when the accused had been at his shop but then he has asserted that the accused had visited at his shop and stated to him that his tax was outstanding. He replied that he had approached the Court and he would pay up the amount of tax as per the judgment that might be given by the Court. After the matter was decided by the Court, he had seen the accused, who told him that he would make the entry if he paid money, otherwise would not. He had gone to pay the tax of Rs.1600/- which he paid and on that occasion the accused told him that he would see him at his shop. He has then deposed that the accused had been to his shop thereafter, asking him what he did. He replied that he would report after returning from the other town where he was going. He has then deposed that the accused had been to his shop on

10/6/1993 and thereafter he had also been to his shop on 2 or 3 occasions. He has then deposed that the accused told him that if he did not pay the money he would be in difficulty and he would be harassed and tax would not be reduced and he would have to pay the whole amount. The complainant told the accused that he would be in the latter's office on 16th. He went to the A.C.B. Office before the said date and gave his complaint exh. 12. Mr. Rathod was present. He called two panchas. He had taken Rs.300/- from him in the denomination of Rs.100/each. Mr. Rathod gave the money to the head constable who was present there asking him to apply anthracene powder. On showing the notes in the light of battery, the notes disclosed blue and white colour. On being asked he placed the notes in the pocket of his shirt. The head constable then washed his hands with the soap. They then went to the office of the Corporation at Naroda. One panch was with him. Other panch was with the police persons. At first they did not find the complainant. However, they found his scooter (lying outside). When the accused came from outside he asked them to go inside. The accused asked whether he brought money and he replied in the affirmative. The complainant told the accused that he should first be given card and then only he would give the money. The accused therefore, took out the bunch of cards. He then asked for the money. He also asked the complainant to give money in a cover. The complainant told him that he did not bring the cover. Hence, the accused gave one piece of white paper saying that the money might be covered in the paper. The complainant thereupon had shown the said 3 notes to the accused. He then wrapped the notes into the aforesaid paper and gave the cover to the accused. The accused held the cover in his hand and went into the next room. The complainant thereupon gave the signal, with the result that the Investigating Officer Mr. Rathod and other police persons and other panch rushed inside the office. The accused tried to run away from the office. He had placed the money below the telephone instrument. Some person who was with him had seen the money being placed below the telephone. He had shown the money lying below the telephone instrument. This is what the complainant has testified in his examination-in-chief. What is important to be noticed from even this evidence is that the complainant had an occasion to take out the currency notes stained with the anthracene powder from his pocket and to show them to the accused. This was the first process which he had undergone at the time of alleged demand. He had also an occasion to take a white piece of paper from the accused for the purpose of covering the notes by wrapping the

paper and this was the second process of the complainant wrapping the 3 notes stained with the anthracene powder into a cover. Then there is a process of the complainant handing over the cover to the accused. This evidence is apparently belied by the fact that although the cover has shown the marks of anthracene powder at the time when the experiment of ultra violet lamp was performed by the Investigating Officer or at the instance of the Investigating Officer when the raid was carried out, but in such an experiment the hands of the accused did not reveal marks of anthracene powder. In the usual and natural course of accepting such a cover with anthracene powder transferred on it, the hand/s of the accused also must have got stained with anthracene powder. The very fact that the hands of the accused did not reveal marks of anthracene powder in the light of the ultra violet lamp would indicate that the money has not passed on to the accused. Thus the evidence of the complainant both with regard to the acceptance and recovery is false on the face of it. It is not understandable how the prosecution case with regard to acceptance of illegal gratification by the accused from the complainant has been accepted by the learned Special Judge. Simply because the cover containing the three muddamal notes was attached from below the telephone instrument, it cannot be assumed that what the complainant has deposed before this Court was the truth. The very story stated by the complainant is falsified from what has been disclosed in the experiment of ultra violet lamp performed at the time of raid. The facts stated by the other witnesses including the Investigating Officer with regard to performance of experiment of ultra violet lamp could not be disputed by the prosecution. Therefore, the prosecution has positively failed to establish acceptance of bribe money and recovery thereof. This is an unescapable conclusion if exh. 15 is borne in mind. It might be noted that the complainant has not stated anything in his examination-in-chief with regard to the card stating necessary effect of the judgment of the Ahmedabad Small Causes Court having been given, being handed over to him. What the complainant has said is that the accused had taken out a bunch of cards in which the details of assessment pursuant to the judgment of the Court were entered into. However, it is not in dispute that the prosecution has set out a case that the accused had prepared a card while keeping a copy thereof for the purpose of giving effect to the judgment of the Ahmedabad Small Causes Court. However, the prosecution has failed to place on record either the original card or the copy thereof for supporting the prosecution story. Therefore, the very basis about the demand and acceptance of illegal

gratification, namely attending to the work suggested by the complainant is absent. The question then arises as to what was the work the accused would have attended to for the benefit of the complainant. There is no answer from the side of the prosecution at the trial. Exh. 15 would reveal such facts as would negative the prosecution story with regard to any favour that might be shown by the accused at the relevant point of time.

12. It might be noted that the first panch witness Lawrence Hiralal Christian has not supported the prosecution. His evidence appears at exh. 7 and needs no discussion. It would be sufficient to state that there is no corroboration in material respect from this vital witness in so far as the story set out by the complainant is concerned. The learned Special Judge has given a great deal of weight to the evidence of second panch witness Kantibhai Chhanabhai. However, this witness was not one who accompanied the complainant and, therefore, in no case he could have thrown any light on what transpired between the complainant and accused at the relevant point of time. Even this panch witness was not able to set out the prosecution story as per the complainant's case. It is not understandable how this panch witness would lend support to the prosecution case, if the facts revolving round the performance of the experiment of ultra violet lamp at the time of carrying out the raid are borne in mind. Even this panch witness has not come out with a story which would indicate find of marks of anthracene powder on the hands of the accused. In fact, he could not say so. In the background of the aforesaid state of prosecution case, vis-a-vis the prosecution evidence it has also to be borne in mind that in respect of the very episode there was an occasion of arranging a trap against the accused at the instance of the complainant on some earlier occasion (15/4/1993). Now if the earlier trap had failed, it is highly improbable that the accused would once again indulge in demanding and/or accepting illegal gratification from the complainant. This is a very important circumstance which should be borne in mind while assessing and appreciating the prosecution evidence. It is no-doubt true that truth has to be ascertained and the learned Special Judge has rightly observed that the Court should not abandon its pursuit for finding out the truth and see that justice is done. However, such a pursuit must be while following all the aspects of the case and not leaving the vital aspects thereof as stated above. In my opinion, this is a case where prosecution has miserably failed in bringing home the guilt of the accused.

The result is that this appeal shall have to be allowed. The impugned judgment and order of conviction and sentence rendered by the learned Special Judge is hereby set aside. The accused is held not guilty of the charges levelled under the aforesaid provisions of the PC Act against him. He is acquitted of the offences so charged. His bail bond shall stand cancelled. Fine, if paid shall be refunded. Appeal is accordingly allowed.

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PVR cr.112197j.